

Message Text

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E.O. 11652: N/A
TAGS: PINT, PGOV, ELAB, UK
SUBJECT: COURT RULES AGAINST SILKIN: APPEAL PROBABLE

REF: LONDON 1244

SUMMARY. THE APPEAL COURT JANUARY 27 RULED AGAINST ATTORNEY GENERAL SILKIN IN THE CASE OF THE POST OFFICE WORKERS' BOYCOTT INJUNCTION (REFTEL). SILKIN LATER MADE A STATEMENT IN COMMONS DEFENDING HIS POSITION AND OUTLINING THE REASONS FOR HIS ORIGINAL DETERMINATION NOT TO SUPPORT THE INJUNCTION PETITION. SILKIN ALSO SAID HE WOULD HAVE TO STUDY THE RULING BEFORE DECIDING WHETHER TO APPEAL TO LORDS, THOUGH THERE SEEMS TO BE LITTLE DOUBT THAT HE WILL APPEAL. QUESTIONS FOLLOWING HIS STATEMENT CONFIRMED THAT THIS ISSUE, AS WE SUSPECTED, WILL POLARIZE COMMONS ALONG PARTY LINES. SUBSEQUENT PUBLIC STATEMENTS BY THE SUCCESSFUL PETITIONER ARE LIKELY TO FURTHER INFLAME PASSIONS. END SUMMARY.

1. THE APPEAL COURT JANUARY 27 UPHELD ITS ORIGINAL DECISION TO GRANT A PRIVATE INJUNCTION AGAINST THE
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POST OFFICE WORKERS' PROPOSED BOYCOTT OF MAIL AND COMMUNICATIONS WITH SOUTH AFRICA (REFTEL). TWO OF THE THREE APPEALS JUDGES SPECIFICALLY REJECTED ATTORNEY GENERAL SAM SILKIN'S ARGUMENT THAT THE COURTS COULD NOT QUESTION HIS REJECTION OF THE INJUNCTION PETITION. LORD DENNING OPINED THAT IT WAS "CONTRARY TO THE WHOLE SPIRIT OF THE LAW IN ENGLAND" AND "A DIRECT CHALLENGE OF THE

RULE OF LAW." LORD JUSTICE LAWTON, THE OTHER JUDGE FOR THE MAJORITY, TOOK A SLIGHTLY DIFFERENT TACK. WHILE DENYING ANY INTENTION TO CLASH WITH PARLIAMENT AND ACCEPTING THAT THE ATTORNEY GENERAL HAD TO TAKE THE BROADER PUBLIC INTEREST INTO ACCOUNT, HE SAID THAT THE ATTORNEY GENERAL CANNOT BE "THE SOLE ARBITER OF WHAT IS THE PUBLIC INTEREST."

2. SILKIN LATER MADE A STATEMENT IN COMMONS EXPLAINING THE REASONING, INCLUDING THE MANY PRECEDENTS, BEHIND HIS ORIGINAL DETERMINATION NOT TO SUPPORT THE INJUNCTION. IN ESSENCE, WHILE HE AGREED THAT A BREACH OF CRIMINAL LAW (INTERFERING WITH THE MAILS) WAS LIKELY TO OCCUR, HE BELIEVED THAT IF HE HAD SUPPORTED THE PETITION, THE POSSIBLE DAMAGE TO THE PUBLIC INTEREST FROM A BROADER INDUSTRIAL ACTION WOULD HAVE BEEN FAR GREATER THAN THE PROPOSED ONE-WEEK BOYCOTT. HE ACKNOWLEDGED HAVING CONSULTED THE POST OFFICE CORPORATION, INDUSTRY SECRETARY VARLEY AND EMPLOYMENT SECRETARY BOOTH BEFORE REACHING HIS DECISION.

3. THE QUESTIONS THAT FOLLOWED SILKIN'S STATEMENT ALLOWED HIM TO DEFINE THE ISSUE RAISED BY THE CASE AND THE COURT'S DECISION -- "WE HAVE HERE A CONSTITUTIONAL ISSUE OF THE HIGHEST IMPORTANCE...WHETHER THE COURTS SHOULD DELIBERATELY CHANGE THE LAW OR WHETHER PARLIAMENT SHOULD DO SO"; "THE WHOLE CONTEXT OF ADMINISTRATIVE LAW", HE SAID, "IS AT ISSUE." OTHER QUESTIONS REVEALED THAT

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TEMPERS WERE RUNNING HIGH ON BOTH SIDES OF THE AISLE. SHADOW ATTORNEY GENERAL SIR MICHAEL HAVERS SET THE TONE FOR TORY QUESTIONERS BY REFERRING TO "THE POLITICAL USE OF DISCRETION" BY THE ATTORNEY GENERAL AND THE LATTER'S FAILURE TO ANNOUNCE EARLY ON THAT THE UNION'S PROPOSED ACTION WAS ILLEGAL. THE MORE EXCITABLE LABOR BACK-BENCHERS DEMANDED THAT SILKIN EITHER APPEAL TO THE LORDS OR BRING FORWARD A BILL ESTABLISHING THE ATTORNEY GENERAL'S SOLE DISCRETION IN SUCH CASES. SILKIN REJECTED THE ARGUMENTS OF BOTH SIDES, NOTING ONLY THAT HE HAD TO STUDY THE DECISION FURTHER BEFORE DETERMINING WHETHER TO APPEAL AND THAT STATUTORY ACTION ON THE BASIS OF A SINGLE CASE WOULD PROBABLY BE UNWISE. THE EXCHANGES, HOWEVER, HIGHLIGHTED THE ANTICIPATED POLARIZING EFFECT OF THE ISSUE.

4. FURTHER FAT WAS ADDED TO THE PARTISAN FIRES BY STATEMENTS OF THE PETITIONER, JOHN GOURIET, WHO IS AN OFFICIAL OF THE NATIONAL ASSOCIATION FOR FREEDOM (NAF). HE CLAIMED THE DECISION "EXPOSED THE NAKED POWER OF THE LIMITED OFFICIAL USE

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BODY POLITIC" AND SUGGESTED IT COULD LEAD TO A CAMPAIGN TO REMOVE SILKIN. DENYING THAT NAF IS OUT TO GET SILKIN, HE WENT ON TO SAY THAT IT IS CONSIDERING ACTION IN SEVERAL OTHER CASES "WHERE ONE ELEMENT OF SOCIETY IS SEEKING TO IMPOSE ITS WILL FOR POLITICAL REASONS ON THE PUBLIC."

5. COMMENT. THE APPEAL COURT'S DECISION, AS WE HAD EXPECTED, EXTENDS THE BOUNDARIES OF THE JUDICIARY'S POWER TO REVIEW EXECUTIVE DECISIONS. IT ALSO DRASTICALLY CHANGES EXISTING ADMINISTRATIVE LAW. THE ODDS, ACCORDINGLY, OVERWHELMINGLY FAVOR AN APPEAL TO LORDS. SHOULD THE LAW LORDS SUSTAIN THE APPEAL COURT, WHICH SEEMS POSSIBLE (LAWYERS WITH WHOM WE HAVE SPOKEN SUGGEST THEY WOULD BE MORE LIKELY TO ACCEPT LAWTON'S MODERATE DECISION). THE ISSUE WOULD ALMOST CERTAINLY BE JOINED IN COMMONS. WE ALSO EXPECT NAF WILL MOVE FORWARD WITH OTHER

CASES AGAINST UNIONS, STIMULATING PASSIONS ON BOTH SIDES
OF THE QUESTION.

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